IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 503 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAGANBHAI FULABHAI PATEL & Ors.

Appearance:

1. Criminal Appeal No. 503 of 1992

MR KC SHAH, ADDL.PUBLIC PROSECUTOR for Appellant-State

MR AB MUNSHI for MR AJ PATEL for orig.complainant

MR SUNIL MEHTA for MR SK BUKHARI for Respondents

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 16/12/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the

Code of Criminal Procedure, 1973, is directed against judgment dated January 24, 1992, rendered by the learned 2nd Judicial Magistrate, First Class, Anand, in Criminal Case No.5283 of 1986, by which the respondents are acquitted of the offences punishable under Sections 326, 324, 147, 148, 149, 188 of the Indian Penal Code and Section 135(1) of the Bombay Police Act.

2. The facts emerging from the record of the case are as under :

Complainant Manubhai Umedbhai Patel is resident of village Adas, Taluka : Anand, District : Kheda. He has two brothers, and the three brothers own agricultural land admeasuring about 25 Bighas which is situated in the sim of village Adas. Survey No.483 admeasuring about 1 Acre & 18 Gunthas originally belonged to Chunibhai Nathabhai Patel. The younger brother of the complainant i.e. Rameshbhai purchased the same for Rs. 10,000/-. Just adjoining the land of the complainant, land of the respondent No.2 is situated. Chunibhai Nathabhai Patel again sold his land i.e. Survey No.483 to Ambalal i.e. respondent No.2 and executed an agreement to sell in his favour. The case of the complainant was that since the date of sale of Survey No.483 by Chunibhai Nathabhai Patel to his younger brother Rameshbhai, Rameshbhai is in possession of the same. As Chunibhai Nathabhai had executed an agreement to sell in favour of respondent No.2, disputes had taken place between respondent No. 2 and Rameshbhai, and to resolve the same, civil cases were filed. The record shows that some dispute was raised in Tenancy Court also. The case of the prosecution is that without impleading Rameshbhai as a party, some proceedings were initiated by the respondent No.2 against Chunibhai Nathabhai Patel in Tenancy Court and they had obtained a favourable judgment, which was challenged in appeal by Rameshbhai and that Rameshbhai had succeeded in the appeal. It is also the case of the complainant that in civil proceedings, permanent injunction was granted in favour of Rameshhai. The incident in question took place on September 7, 1986 in Survey No.483 which is situated in the sim of village Adas. At about 2.00 P.M. when the complainant and others were harvesting seedlings grown in the field, one Thakorbhai Ambalal came in a tractor to which a cultivator was attached. Thakorbhai was armed with a stick and started cultivating survey No.483, which was objected to by the complainant and others, as a result of which a quarrel ensued. Thakorbhai left the field leaving tractor in the field and came back with the respondents. The case of the complainant is that respondent No.2 was armed with a dharia, whereas respondent No.3 was armed with a spear and respondent

Nos.4 & 5 were armed with sticks. According to the complainant, immediately on arrival, respondent No.3 gave a blow with spear on the wrist of his right hand, whereas respondent No.1 gave a dharia blow to Arvindbhai, who is brother of the complainant, as a result of which left part of abdomen was pierced. It is further the case of the complainant that the respondent Nos.4 & 5 gave stick blows on shoulder of Arvindbhai, as a result of which thumb of his left hand was fractured. It is also the case of the complainant that the respondent No.2 gave dharia blow on neck of Rameshbhai, who is brother of the complainant, as a result of which he had started bleeding. Meanwhile, Mahendrabhai, who was working as a labourer with the complainant, intervened and the quarreling groups were separated. Thereafter, the respondents fled away, whereas three injured were removed to hospital. Subsequently, complainant Manubhai lodged complaint with P.S.I. of Anand Rural Police Station. After usual investigation, the respondents were chargesheeted in the Court of learned Judicial Magistrate, First Class, Anand for alleged commission of offences punishable under Sections 326, 324, 147, 148, 149 & 188 of the Indian Penal Code as well as Section 135(1) of the Bombay Police Act.

3. Thereafter necessary charge was framed against the respondents at Exh.4. It was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Manubhai Umedbhai as PW.1 at Exh.14, (2) Harshad Ishwarbhai Patel as PW.2 at Exh.24, (3) Arvindbhai Umedbhai as PW.3 at Exh.30, (4) Thakorbhai Ishwarbhai as PW.4 at Exh.33, (5) Rameshbhai Umedbhai as PW.5 at Exh.36, (6) Mahendrabhai Manibhai as PW.6 at Exh.49, (7) Madhavsinh Parbatsinh as PW.7 at Exh.52, (8) Bhavsinh Gotabhai as PW.8 at Exh.54, (9) Narhari Prabhudas as PW.9 at Exh.57, and (10) Sirajudin Nurmiya as PW.10 at Exh.61, to prove its case against the respondents. The prosecution also produced documentary evidence, such as, Village Form No.6 of survey No.483 at Exh.22, certificate indicating injury sustained by Rameshbhai Umedbhai at Exh.25, certificate of injury sustained by witness Manubhai Umedbhai at Exh.26, X-ray at Exh.28, certificate of injury sustained by Arvindbhai Umedbhai at Exh.29, document indicating that survey No.483 was purchased by Rameshbhai Umedbhai at Exh.31, dying declaration of Rameshbhai Patel recorded by Executive Magistrate at Exh.34, judgment rendered in G.R.T.Appeal No.6386 of 1984 at Exh.37, judgment rendered by the Gujarat Revenue Tribunal in Revision Application B.A.No.562/84 at Exh.40, application seeking interim

relief in Regular Civil Suit No.271/84 at Exh.41, Village Form No.7/12, Village Form No.6 and another copy of Village Form No.6 of survey No.483 at Exhs.42, 43 & 44 respectively, purshis by which Regular Civil Suit No.271/84 was withdrawn at Exh.46, panchnama indicating production of weapons used by the respondents at Exh.53, panchnama indicating seizure of clothes of the complainant and his brothers at Exh.55, report of Forensic Science Laboratory at Exh.63, certificate mentioning injuries sustained by Manubhai Fulabhai at Exh.72 etc. in support of its case against the respondents.

4. After recording of evidence of prosecution witnesses was over, the learned Magistrate explained to the respondents the circumstances appearing against them and recorded their further statements as required by Section 313 of the Code. In his further statement, the case of the respondent No.1 was that survey No.483 was being cultivated by his younger brother Ambalal since 1976 and that a false complaint was filed to snatch possession of the same from him. The respondent No.2 in his further statement mentioned that he is tenant of the land in question since 1976 and in order to take away possession from him, false complaint was filed against him. The claim, which was advanced by the respondent No.1 in his further statement under Section 313 of the Code, was adopted by rest of the accused and it was stated that false complaint was filed. However, no evidence was adduced by any of the respondents to substantiate the claim advanced in their respective further statement.

5. On appreciation of evidence adduced by the prosecution, the learned Magistrate has disbelieved the case of the prosecution and acquitted the respondents by judgment dated January 24, 1992, giving rise to instant appeal.

6. Mr.K.C.Shah, learned A.P.P. for the State contended that in view of evidence tendered by the injured witnesses regarding injuries sustained by them, the learned Magistrate was not justified in acquitting the accused of the offences with which they were charged. According to the learned A.P.P., testimony of the complainant stands corroborated by the evidence of other two injured witnesses as well as medical evidence on record and, therefore, the impugned judgment should be set aside. What was stressed by the learned counsel of the State Government was that the case of the prosecution against the respondents stands fully established by

reliable and cogent evidence of the complainant as well as his brothers and, therefore, the appeal should be allowed.

7. Mr.A.B.Munshi, learned counsel appearing for Mr.A.J.Patel, learned counsel who represents the original complainant and who had filed Criminal Revision Application No.171 of 1992, has adopted the arguments advanced by Mr.Shah, learned A.P.P. and it was further contended that as the evidence on record has not been appreciated by the learned Magistrate in its true perspective, the appeal filed by the State Government should be accepted.

8. Mr.Sunil Mehta, learned counsel appearing for Mr.S.K.Bukhari, learned counsel of the respondents, pleaded that the learned Magistrate has recorded cogent and convincing reasons for disbelieving the testimony of injured and, therefore, well-founded acquittal of the respondents should not be interfered with by this Court in instant appeal. It was argued that the statements made by the complainant and his brothers would indicate that they were not in possession of survey No.483 at the time of incident and that a false case was filed against the respondents with a view to obtaining possession from the respondents. It was asserted that the case putforth by the prosecution that the complainant and his brothers were plucking Dharu raised in the field and were assaulted by the respondents, is highly doubtful, inasmuch as the averments made in the complaint would show that they were plucking Dharu which was raised in adjoining survey No.485 and not in field bearing survey No.483. The learned counsel pointed out relevant contradictions which were brought on record of the case during the cross-examination of witnesses examined in the case and pleaded that the evidence tendered by them has not inspired confidence of the learned Magistrate, who had opportunity to observe demeanour of the witnesses and, therefore, the appeal should not be accepted by the Court. It was argued that the view taken by the learned Magistrate on evidence cannot be termed either as perverse or as unreasonable so as to warrant interference with the same in instant appeal and, therefore, the appeal should be dismissed even if another view is possible. The learned counsel of the respondents emphasised that the learned counsel of the State Government has failed to dislodge the well-founded reasons recorded by the learned Magistrate for acquitting the respondents and, therefore, the appeal should be dismissed.

9. This Court has heard Mr.K.C.Shah, learned A.P.P. for the State, Mr.A.B.Munshi, learned counsel of the original complainant and Mr.Sunil Mehta, learned counsel of the respondents, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. Before dealing with the matter on merits, it is relevant to notice that the respondent No.1 has expired on September 23, 2004 during the pendency of the appeal. The learned counsel of the respondents has produced xerox copy of death certificate issued by the competent authority, which indicates that Maganbhai Fulabhai i.e. the respondent No.1 expired on September 23, 2004. The fact that respondent No.1 has expired during the pendency of the appeal, is neither disputed by the learned A.P.P. nor by the learned counsel of the complainant. Under the circumstances, the appeal will have to be treated as having finally abated against him on his death. Accordingly, it is held that instant appeal has finally abated against respondent No.1 on his death on September 23, 2004.

11. The case of the complainant is that he and his brothers were assaulted when they had objected to the field being cultivated by Thakorbhai Ambalal. However, the panchnama shows that half portion of field was already cultivated with the help of tractor. The case of the prosecution is that complainant Manubhai had gone to survey No.483 from his field bearing survey No.485 on sighting tractor in survey No.483. If that was so, then the driver of the tractor could not have cultivated half of the land of survey No.483. This fact itself belies the presence of all the three brothers along with their servants in the field in question. It is mentioned in the panchnama Exh.53 that the scuffle had started in Dharuvadia and that four slippers were found from Dharuvadia. There is no manner of doubt that Dharuvadia and the place where tractor was standing, which is shown in the panchnama as place of incident, are two different sites. It is nobody's case that scuffle had first of all taken place in Dharuvadia and thereafter the complainant and his brothers were assaulted at the place where the tractor had stopped. The prosecution is not able to explain as to how the marks of scuffle and four slippers were found in Dharuvadia. Thus, genesis of incident itself is in great doubt. The prosecution witnesses have stated that plucked Dharu was collected in baskets. However, panchnama of place of incident does not mention

find of any basket at all. Under the circumstances, the case of the prosecution that the complainant and others were plucking Dharu in the field bearing survey No.483 itself becomes highly doubtful. It is well to remember that it is nobody's case that no plucking of Dharu was made from Dharuvadia. The defence of the respondents before the trial Court was that at the time when Survey No.483 was cultivated with the help of tractor, all the three injured brothers were at their respective house situated in the village and were informed about cultivation later on and, therefore, they had come to survey No.483 from their respective house with sticks and beaten the tractor-driver who was cultivating the field, and the tractor-driver, who was made to alight from the tractor, was being taken to warehouse which is situated very close to the field and after reaching Dharuvadia, the complainant and his brothers had started assaulting the tractor-driver as well as servant, which was resisted to by them, as a result of which some injuries were caused to the complainant and his brothers, but they had not caused any injury at all. This defence stands probabilised in view of statements made by the complainant and other witnesses during their cross-examination. Witness Mahendrabhai Manibhai, examined at Exh.49, who is servant, had initially supported the prosecution case in his examination-in-chief, but in cross-examination, he had to admit that Dharu was raised in survey No.485 and that they were plucking Dharu from the said survey number, which almost falsifies the case of the complainant that Dharu was being plucked in survey No.483. His cross-examination also shows that chappals were lying on Dhalia (boundary of field) situated in survey No.485. Under the circumstances, the case of the complainant and his brothers that they were assaulted in survey No.483 becomes highly doubtful. Normally, a Court would act upon testimony of an injured witness. However, having regard to the serious infirmities which appear from the evidence of three injured witnesses, it is very difficult and also risky to place implicit faith on their evidence. For the reasons best known to the prosecution, driver of the tractor was not prosecuted alongwith the respondents, nor examined as one of the witnesses to prove its case against the respondents. The record of the case shows that tractor which was found lying in the field bearing survey No.483, was seized during the course of investigation, but the same was handed over to its owner during the trial and therefore, non-examination of the driver of the tractor becomes relevant having regard to the facts of the case. The learned Magistrate has recorded cogent and convincing reasons for according

benefit of doubt to the respondents. Those reasons are to be found in paragraphs 5 to 20 of the impugned judgment with which this Court completely concurs. The reasons given by the learned Magistrate for acquitting the respondents cannot be termed either as perverse or unreasonable. The reasons for acquittal recorded by the learned Magistrate are amply borne out from the record of the case. Therefore, no case is made out by the learned counsel of the State Government as well as complainant to interfere with the impugned judgment in instant appeal.

12. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Magistrate who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Magistrate, this Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Magistrate and in the opinion of this Court, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Magistrate and, therefore, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Magistrate in the impugned judgment.

(J.M.Panchal,J.)

(patel)